

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-CV-11069-JLT

ABRAHAM PHILIP, M.D.  
Plaintiff,

V.

JOHN CRONIN,  
Defendant.

**DEFENDANT’S SUPPLEMENT TO JOINT  
PRE-TRIAL MEMORANDUM**

The Defendant, John Cronin, hereby supplements the Joint Pre-Trial Memorandum to add to Defendant's Statement of Issues of Law the following:

## VI. Defendant's Statement of Issues Of Law

7. As raised by Defendant in his Affirmative Defense # 2 to the Amended Complaint, Defendant is entitled to immunity with respect to Plaintiff's First Amendment Claim. A government employee is immune to damages where a reasonable official would believe, albeit mistakenly, that his conduct did not violate the First Amendment. Harlow v. Fitzgerald, 457 U.S. 800, 818-19, 102 S.Ct. 2727 (1982). Immunity exists even when the right invoked by the plaintiff is clearly established, "so long as the official could reasonably have believed 'on the facts' that no violation existed." Dirrane v. Brookline Police Dep't, 315 F.3d 65, 69 (1st Cir. 2002) (*citations omitted*). In this case, Defendant carried out the instructions of higher officials at the Executive Office of Public Safety to terminate Plaintiff's contract due to Plaintiff's inappropriate professional behavior.

Respectfully Submitted,  
JOHN CRONIN,

By his Attorneys,

THOMAS F. REILLY  
ATTORNEY GENERAL

s/ Brian M. Donovan  
Jean M. Kelley, BBO #265540  
Brian M. Donovan, BBO #650551  
Assistant Attorneys General  
Trial Division/Government Bureau  
One Ashburton Place, Room 1813  
Boston MA 02108  
(617) 727-2200 ext. 3325  
Fax: 617-727-3118  
[brian.donovan@ago.state.ma.us](mailto:brian.donovan@ago.state.ma.us)

March 10, 2006

### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 10, 2006.

s/ Brian M. Donovan  
Brian M. Donovan  
Assistant Attorney General  
Government Bureau/Trial Division  
[brian.donovan@ago.state.ma.us](mailto:brian.donovan@ago.state.ma.us)